

Exhibit A

RESCAP

MORRISON | FOERSTER

Sent/Received

Claim Information

JUL 25 2013

Claim Number	4445
Basis of Claim	<p>To _____ By _____</p> <p>BASIS OF THIS CLAIM: This claim is based on the civil action I filed against Executive Trustee Services, LLC (hereinafter "ETS"), one of the debtors in this ResCap action: Action No. 505386, Superior Court of San Mateo California, May 5, 2011. This action has been stayed since May 23, 2012 when Debtor Executive Trustee Services filed a Notice of Stay of Proceedings on that date.</p> <p>The basis of this action, in general terms, is the negligence of ETS when it proceeded with a trustee sale of the property of claimant without having any authority to do so, and failing to ascertain whether it had authority to conduct a trustee sale, thus causing claimant significant damages—explained fully in the attached documents.</p> <p>The basis of this lawsuit in San Mateo County, CA and the basis of this claim (Claim No. 4445) is identical, and the damages sought in each are identical. The proof that I am "owed money from one of the debtors as of ay 14, 2012" is contained in the attached documents: (1) Complaint, CIV505386; (2) Statement of Damages filed 8/22/11; (3) Memorandum of Costs; (4) Declaration of Alan Moss In support of Request To Enter Default Judgment By Court. These documents are attached hereto, and made a part of this claim.</p>

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: 7900		
I DON'T KNOW IF MY CLAIM "RELATES" TO ONE OF THE DEBTORS AS THAT TERM IS USED. THE LOAN WAS SERVICED BY GMAC BUT THE CLAIM IS NOT AGAINST GMAC. IT IS AGAINST THEIR ALLEGED TRUSTEE.		
Address of property related to the above loan number:		
86 SAN LUCAS		
City:	State:	ZIP Code:
MOSS BEACH	CA	94038.

Additional resources may be found at - <http://www.kccllc.net/rescap>

TELEPHONE:
(415)494-8314

E-MAIL: alanmoss.office@gmail.com

FACSIMILE:
(650)728-0738

July 20, 2013

Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnsota 55438

Re: ResCap Bankruptcy
Claim No. 4445, Alan Moss

Dear Sirs::

Pursuant to your letter of June 21, 2013(on Morrison and Foerster letter head), enclosed you will find my response to the information requested regarding Claim No. 4445.

I have attached four documents as Exhibits 1 - 4 to that form entitled Claim Information." These four documents explain in great detail the lawsuit I filed against Executive Trustee Services, LLC("ETS") and which was stayed by operation of the bankruptcy filing, and which was the basis of my claim against the debtor. The claim in each are identical as set forth on that form. The lawsuit is still pending.

ETS is one of the debtors encompassed in the ResCap bankruptcy. ETS acted as trustee and initiated and consummated a trustee sale of my property, when it was illegally appointed as a substitute trustee, and due to its negligence, failed to ascertain if they had been given proper authority to act as trustee. It had not. ETS has now rescinded the sale and returned title to me. However, I suffered and continue to suffer great damages as a result of its illegal action, all of which is explained in the documents attached. My action was stayed one day before a default judgment prove-up hearing to establish the extent of damages—the amount of which is identical to the claim I filed in this ResCap action.

I believe this fully responds to your request for information. If for some reason it does not, please let me know.

Very truly yours,



ALAN MOSS

CLAIM No. 4445

1 Alan Moss
2 P.O. Box 721
3 Moss Beach CA 94038
4 Telephone: (415)296-7500
5 Facsimile: (650)728-0738

(ENDORSED)
FILED
SAN MATEO COUNTY

MAY 5 2011

CLERK OF THE SUPERIOR COURT
by G. Lopez
RECEIVED

6 Attorney *In Pro Per*

7
8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10
11 ALAN IRVING MOSS,

12 Plaintiff,)

13 vs.)

14 EXECUTIVE TRUSTEE SERVICES, LLC)
15 F/K/A EXECUTIVE TRUSTEE SERVICES,)
16 INC., AND DOES 1-50, INCLUSIVE)

17 Defendants.)
18

CIV 505386
Action No.

COMPLAINT FOR
(1). Negligence
(2). Negligence *per se*
(3). Fraud
(4). Intentional Infliction of
Emotional Distress
(5). Negligent Infliction of
Emotional Distress

19 Plaintiff ALAN IRVING MOSS alleges as follows:

20 1. Plaintiff ALAN IRVING MOSS is, and at all times hereinafter mentioned
21 was, an individual residing in the County of San Mateo, California.

22 2. Defendant EXECUTIVE TRUSTEE SERVICES, LLC F/K/A EXECU-
23 TIVE TRUSTEE SERVICES, INC., (hereinafter "ETS") is, and at all times hereinafter men-
24 tioned was, a business of unknown legal origin and form.

25 3. The true names and capacities, whether individual, corporate, associate or
26

1 otherwise, of defendants sued herein as Does I through 50, inclusive, are unknown to plaintiff,
2 who sue said defendants by such fictitious names; plaintiff will amend this Complaint to show
3 the true names and capacities if and when the same are ascertained; and plaintiff is informed
4 and believes, and thereon alleges, that said defendants, and each of them, are responsible in
5 some manner for plaintiff's damages as herein alleged.

6 4. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, each of the defendants was the agent of the remaining defendants and, in doing
8 the things herein alleged, was acting within the course and scope of such agency.

9 5. Plaintiff has owned and resided in the property located at 86 San Lucas,
10 Moss Beach, California (the "property"), within the County of San Mateo, continuously from
11 1984 to the present. The legal description of the property, as contained in the official records
12 of San Mateo County, is APN No. 037-275-120, Lots 22 and 23, Blk. 13, Riviera Ocean
13 Villa.

14 6. According to actions taken by defendant hereinafter described, the subject
15 property also included Parcel No. 037-275-170, Lot 20 when it was encumbered by the finan-
16 cial instrument which is the subject of this lawsuit. Lot 20 is not contiguous to Lots 22 and
17 23, but rather is separated by a legally separate lot, Lot 21.

18 7. On or about June 22, 2005, plaintiff took out a loan against the subject pro-
19 perty, as evidenced by a note. Plaintiff was the borrower. CJ Mortgage, Inc. was the lender.

20 8. The Note was secured by a Deed of Trust, in which the purported parties
21 were: CJ Mortgage, Inc. as the beneficiary, Alliance Title was the trustee, and plaintiff was
22 the trustor. Said Deed of Trust described the property as APN 037-275-170-6. Said instru-
23 ment was recorded on July 5, 2005.

24 9. The County of San Mateo does not contain any APN number with the des-
25 cription 037-275-170-6.

1 10. The original lender, CJ Mortgage, Inc. drafted both the Note and Deed of
2 Trust. Plaintiff took no part in the drafting of these documents, which were drafted so as to
3 bifurcate the debt(Note) from the security(Deed of Trust) in order to, on information and be-
4 lief, facilitate the creation of certain securitized investment vehicles.

5 11. According to public records on file with the Recorders Office of San Mateo
6 County, on or about June 27, 2005, said property was allegedly assigned to Option One Mort-
7 gage Corporation by CJ Mortgage Inc. The trustee listed in said assignment was Alliance
8 Title. Said alleged assignment was recorded on April 4, 2007. A true and correct copy of said
9 assignment as contained in the official records of the County of San Mateo is attached hereto
10 as Exhibit 2. Plaintiff herein never received notice of said assignment. Said instru-ment was
11 recorded on July 5, 2005.

12 12. On or about October 26, 2005, Option One Mortgage Corporation prepared
13 a document entitled "Substitution of Trustee," in which it substituted Premier Trust Deed Ser-
14 vices Inc. as trustee in place and stead of Alliance Title. Said document was recorded on
15 February 3, 2006. A true and correct copy of said assignment as contained in the official re-
16 cords of the County of San Mateo is attached hereto as Exhibit 3.

17 13. On or about October 26, 2005, an entity set forth as "TCIF REO2, LLC"
18 prepared a document entitled "Substitution of Trustee," in which it claims to be the "present
19 beneficiary and claims to substitute Executive Trust Deed Services, LLC FKA Executive
20 Trust Deed Services, Inc." as trustee in place and stead of, on information and belief, Premier
21 Trust Deed Services Inc. Said document was recorded on November 10, 2006. This docu-
22 ment was signed in Pennsylvania by a Margie Kwaitanowski, as vice-president of TCIP
23 REO2, LLC. On or about October 25, 2005, Ms. Kwaitanowski was actually employed by
24 GMAC in Pennsylvania, a business entity of unknown legal form. In addition, the notary on
25 the document was Brenda Staehle, who was also an employee of GMAC. A true and correct
26

1 copy of said assignment as contained in the official records of the County of San Mateo is at-
2 tached hereto as Exhibit 4.

3 14. On or about October 26, 2005, TCIF REO2, LLC was not the present bene-
4 ficiary under the deed of trust referred to hereinabove, nor had it been assigned the deed of
5 trust as of that date.

6 15. On or about November 10, 2006, TCIF REO2, LLC was not the present be-
7 neficiary under the deed of trust, nor had it been assigned the deed of trust as of that date.

8 16. According to public records on file with the Recorders Office of San Mateo
9 County, on or about September 15, 2007, said property was allegedly assigned to "TCIF,
10 LLC" by Option One Mortgage Inc. The signature of the officer of the assignor was notar-
11 ized more than four months prior to the signature of the representative of the assignor, on May
12 7, 2007; the date of May 7, 2007 was interlineated by handwriting after a typed date of May
13 8, 2008 was crossed out. The document was allegedly notarized on May 7, 2007; the "7" of
14 the "2007" date was written by hand over the "8" of the typed "2008." Plaintiff is informed
15 and believes, and on that basis alleges, that this document was actually signed and notarized
16 on My 8, 2008. Said alleged assignment was recorded on June 16, 2008. A true and correct
17 copy of said assignment as contained in the official records of the County of San Mateo is at-
18 tached hereto as Exhibit 5. Plaintiff herein never received notice of said assignment.

19 17. According to public records on file with the Recorders Office of San Mateo
20 County, on or about September 17, 2007, a Notice of Default was recorded against said pro-
21 perty. Said document was issued by "TCIF REO2, LLC c/o Executive Trustee Services
22 LLC." The document was signed by "Executive Trustee Services, LLC as agent for benefi-
23 ciary." The document was recorded on September 18, 2007. A true and correct copy of said
24 assignment as contained in the official records of the County of San Mateo is attached hereto
25 as Exhibit 6.

26

1 18. Plaintiff never received notice of any Notice of Default up to and including
2 the present time.

3 19. According to public records on file with the Recorders Office of San Mateo
4 County, on or about April 29, 2008, said property was allegedly assigned to The Bank of New
5 York Trust Company by TCIF, LLC. Said alleged assignment was recorded on June 16, 2008.
6 A true and correct copy of said assignment as contained in the official records of the County
7 of San Mateo is attached hereto as Exhibit 7. Plaintiff herein never received notice of said
8 assignment.

9 20. According to public records on file with the Recorders Office of San Mateo
10 County, on or about May 19, 2008, a Notice of Trustees Sale was recorded on said property
11 by ETS Services, LLC, which was, on information and belief, a sub-entity of Executive Trus-
12 tee Services. A true and correct copy of this document as contained in the official records of
13 the County of San Mateo is attached hereto as Exhibit 8.

14 21. On or about May 7, 2009, unbeknownst to plaintiff, a Trustee Sale took
15 place, conducted by defendant ETS, pursuant to the Notice of Default and Notice of Trustees
16 Sale, regarding the foreclosure on the property, in which defendant ETS as trustee, sold the
17 property.

18 22. On or about May 12, 2009, defendant ETS prepared a document entitled
19 Trustee's Deed Upon Sale which purported to grant to The Bank of New York Trust Com-
20 pany, title to said property. The document states that "grantee was the foreclosing benefi-
21 ciary." On information and belief, this was a full credit purchase sale, and no cash changed
22 hands, in derogation of the specific language of the Notice of Trustees Sale. The Bank of
23 New York Trust Company was not a BFP. A true and correct copy of this document as con-
24 tained in the official records of the County of San Mateo is attached hereto as Exhibit 9.

1 **FIRST CAUSE OF ACTION**

2 **(NEGLIGENCE)**

3
4 23. Plaintiff re-alleges and re-asserts, as though fully set forth herein, Para-
5 graphs 1 - 22 inclusive.

6 24. At all relevant times herein, defendant ETS, acting as trustee, owed plaintiff
7 an affirmative duty of care, that in fulfilling its responsibilities as trustee, and in particular to
8 exercise the power of sale of residential real property, to faithfully comply and strictly com-
9 port with the laws of California and the provisions of the deed of trust referred to herein-
10 above. In particular, because ETS was acting under a power of sale whose actions could re-
11 sult in the removal of plaintiff from his residence, and because ETS had an affirmative duty
12 of care to plaintiff, ETS had an affirmative duty of care to plaintiff to treat plaintiff fairly, in
13 a manner equal to the manner in which it was treating the alleged beneficiary, and in confor-
14 mance with the law.

15 25. Prior to issuing the Notice of Default and the Notice of Trustees Sale, de-
16 fendant ETS negligently failed to examine the chain-of-title of the subject property and negli-
17 gently failed to determine that it had not in fact been legally and properly substituted in as
18 trustee, and had no power and authority to issue said Notice of Default and Notice of Trustee
19 Sale.

20 26. At the time that defendant ETS was allegedly made trustee by virtue of said
21 substitution of trustee prepared and recorded by TCIF REO2, LLC , TCIF REO2, LLC was
22 not the present beneficiary of the deed of trust. Therefore, defendant ETS could not, and did
23 not, legally acquire the power of sale from the purported substitution; therefore, ETS had no
24 power and authority to issue said notices.

25 27. Prior to conducting the trustee's sale which resulted in plaintiff allegedly
26

1 losing his property, defendant ETS negligently failed to examine the chain-of-title of the sub-
2 ject property and negligently failed to determine that it had in fact been legally and properly
3 substituted in as trustee, and had the power and authority to conduct said trustee's sale.

4 28. At the time that defendant ETS was allegedly made trustee by virtue of said
5 substitution of trustee prepared and recorded by TCIF REO2, TCIF REO2, LLC was not the
6 present beneficiary of the deed of trust. Therefore, defendant ETS could not, and did not, le-
7 gally acquire the power of sale from the purported substitution; therefore, ETS had no power
8 and authority to conduct said trustee sale.

9 29. Prior to issuing the Trustees Deed referred to hereinabove, defendant ETS
10 negligently failed to examine the chain-of-title of the subject property and negligently failed
11 to determine that it had in fact been legally and properly substituted in as trustee, and had the
12 power and authority to issue said Trustees Deed.

13 30. At the time that defendant ETS was allegedly made trustee by virtue of said
14 substitution of trustee prepared and recorded by TCIF REO2, TCIF REO2, LLC was not the
15 present beneficiary of the deed of trust. Therefore, ETS could not, and did not, legally acquire
16 the power of sale from the purported substitution; therefore, ETS had no power and authority
17 to issue said Trustees Deed.

18 31. By doing the acts aforementioned mentioned, and each of them, defendant
19 ETS breached the duty of care it owed to plaintiff.

20 32. As a direct and proximate result of the negligence of defendant ETS, as set
21 forth hereinabove, plaintiff sustained damage, both physically, emotionally and financially,
22 and plaintiff prays judgment against defendant as hereinafter set forth.

23 **SECOND CAUSE OF ACTION**

24 **(NEGLIGENCE *PER SE*)**

25 33. Plaintiff re-alleges and re-asserts, as though fully set forth herein, para-
26

1 graphs 1 - 32 inclusive.

2 34. On or about September 21, 2006, defendant ETS was allegedly substituted
3 in as trustee of the Note and Deed of Trust as set forth hereinabove.

4 35. As the purported trustee under a Deed of Trust, ETS believed it had ac-
5 quired the powers enunciated in the Deed of Trust and the relevant statutes of the State of
6 California, i.e., Civil Code §§ 2924b and 2934, including the power of sale.

7 36. Acting under this supposed power, defendant ETS negligently issued a No-
8 tice of Default dated September 17, 2007 regarding the subject property.

9 37. Acting under this supposed power, ETS negligently issued a Notice of Trus-
10 tees Sale dated May 19, 2008.

11 38. Acting under this supposed power, defendant ETS negligently conducted
12 a Trustees Sale on said property, in which The Bank of New York Trust Company "bought"
13 the property on a credit bid and acting as the "foreclosing beneficiary."

14 39. Acting under this supposed power, defendant ETS negligently issued a
15 Trustees Deed to the Bank of New York Trust Company, purporting to pass title to said pro-
16 perty to The Bank of New York Trust Company.

17 40. At all relevant times herein, there was in effect California Civil Code §§
18 2924b and 2934 which provided the only method by which a beneficiary could substitute in
19 a new trustee and insin on said trustee all the powers of the previous trustee and trust deed.
20 Pursuant to said statute, only the beneficiary or beneficiaries had the power to substitute a new
21 trustee. On the date that ETS was substituted in as new trustee by TCIF REO2, LLC, TCIF
22 REO2, LLC was not the beneficiary under said Deed of Trust, because it was not assigned the
23 deed of trust until May 7, 2007 at the earliest.

24 41. Civil Code §§ 2924b and 2934 are a statutory scheme designed specifically
25 for the protection of trustors under a deed of trust, specifically in this case the plaintiff herein.

26

1 42. As a result of defendant ETS acting in derogation of the aforementioned
2 statutes, plaintiff was directly and proximately injured as hereinafter prayed and set forth.

3 43. As a direct and proximate result of the negligence of defendant ETS, as set
4 forth hereinabove, plaintiff sustained damaged, both physically, emotionally and financially,
5 and plaintiff prays judgment against defendant as hereinafter set forth.

6
7 **THIRD CAUSE OF ACTION**

8 **(FRAUD)**

9 44. Plaintiff re-alleges and re-asserts, as though fully set forth herein, para-
10 graphs 1 - 43 inclusive.

11 45. At the time that defendant ETS issued the Notice of Default and the Notice
12 of Trustee Sale, defendant ETS knew or should have known, that it did not have the legal au-
13 thority to issue said notices.

14 46. At the time that defendant ETS conducted the trustees sale set forth here-
15 inabove, defendant ETS knew or should have known, that it did not have the legal authority
16 to conduct said sale.

17 47. At the time that defendant ETS issued the Trustees Deed on said property,
18 as set forth hereinabove, defendant ETS knew or should have known, that it did not have the
19 legal authority to issue said Trustees Deed.

20 48. As a direct result of these aforementioned actions of defendant ETS, and
21 because of direct representations of defendant ETS to plaintiff, plaintiff was caused to believe
22 that his property was subject to being sold at a trustees sale and that said sale would not be
23 cancelled unless and until plaintiff reached an agreement with the loan servicer, GMAC.

24 49. Defendant ETS, by doing the acts hereinabove complained of, intended that
25 plaintiff rely on its official capacity and representations, and that plaintiff had to reach agree-
26

1 ment with GMAC to cancel said sale.

2 50. Due to the fraudulent misrepresentations made to plaintiff by defendant
3 ETS, and others purporting to act on behalf of those purporting to hold a beneficial interests
4 in the property, and their principals, agents, assignors, assignees and predecessor, plaintiff was
5 induced to reasonably rely on their express and implied assurance regarding loan forbearance
6 and forgiveness, cancellation and postponement of the foreclosure process.

7 51. Plaintiff reasonably relied on said representations in paying \$50,000.00 to
8 the loan servicer in order to cancel said sale; plaintiff reasonably and in good faith relied on
9 said representations that the sale would be cancelled; as a direct result, plaintiff believed that
10 defendant ETS cancelled said scheduled trustees sale.

11 52. In reliance on said representations, Plaintiff did not receive notice of any
12 subsequently scheduled trustee sale.

13 53. As a result of the fraudulent activities by defendant ETS, Does 1 through
14 50 and their assignors ad predecessors in interest, plaintiff has been damaged in an amount
15 to be determined at trial, both as to compensatory and punitive damages.

16 54. As a direct and proximate result of the negligence of defendant ETS, as set
17 forth hereinabove, plaintiff sustained damaged, both physically, emotionally and financially,
18 and plaintiff prays judgment against defendant as hereinafter set forth.

19

20

FOURTH CAUSE OF ACTION

21

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

22

23 55. Plaintiff re-alleges and re-asserts, as though fully set forth herein, para-
24 graphs 1 through 54 inclusive.

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56. Defendant's conduct, as hereinabove set forth, was intentional and mali-

1 cious and done for the purpose of causing plaintiff to suffer humiliation, mental anguish, and
2 emotional and physical distress. Defendant's conduct in confirming and ratifying that conduct
3 was done with knowledge that plaintiff's emotional and physical distress would thereby in-
4 crease, and was done with a wanton and reckless disregard of the consequences to plaintiff.

5 57. As a direct and proximate result of the acts alleged above, plaintiff suffered
6 humiliation, mental anguish and emotional and physical distress, and has been injured in mind
7 and body, all to plaintiff's damage.

8 58. By reason of the acts alleged above, plaintiff was prevented from attending
9 to plaintiff's usual occupation and thereby lost earnings. Plaintiff is informed and believes
10 and thereon alleges, that plaintiff will thereby be prevented from attending to plaintiff's usual
11 occupation for a period in the future which plaintiff cannot ascertain, and will thereby sustain
12 further loss of earnings.

13 59. The acts of defendants alleged above were willful, wanton, malicious, and
14 oppressive, and justify the awarding of exemplary and punitive damages.

15 60. Defendant ETS, Does 1 through 50 and any of their agents, principals, as-
16 signors, assignees, predecessor and related entities are in the business of real estate and knew
17 or should have known of the requirements of State law regarding the sale of real property.
18 Defendants, and each of them, deliberately and carelessly, or with such callous disregard for
19 State law that it amounted to recklessness, violated the requirements of State law as set forth
20 hereinabove.

21 61. Defendants intentionally, with callous disregard for plaintiff, and with ma-
22 lice aforethought violated numerous requirements of State law, and as a direct and proximate
23 result, plaintiff was severely injured and made to suffer for months on end as this process
24 went forward.

25 62. As a direct and proximate result of the negligence of defendant ETS, Does
26

1 1 -50, and their agents, as set forth hereinabove, plaintiff sustained damages, both physically,
2 emotionally and financially, and plaintiff prays judgment against defendant as hereinafter set
3 forth.

4
5 **FIFTH CAUSE OF ACTION**
6 **(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**
7

8 63. Plaintiff realleges and re-asserts, as though fully set forth herein, para-graphs
9 1 through 62 inclusive.

10 63. Defendant ETS, Does 1 - 50, and their agents, knew or should have known,
11 that its failure to exercise due care in the performance of its acts, as set forth hereinabove,
12 would cause plaintiff severe emotional distress.

13 64. Defendant's, and each of them, in their acts in defiance of the law, and in
14 a manner designed to be in derogation of California statute and the deed of trust, was a direct
15 breach of the law and statutes and deed of trust.

16 65. As a direct and proximate result of defendant's, and each of them, acts and
17 omissions, plaintiff suffered extreme emotional distress and threatened, and as of this date,
18 actual, loss of his property.

19 66. As a further proximate result of defendant's breach of duty and the conse-
20 quences proximately caused by it, as hereinabove alleged, plaintiff suffered severe emotional
21 distress and mental suffering, all to his damage.

22 67. As a direct and proximate result of the negligence of defendant ETS, as set
23 forth hereinabove, plaintiff sustained damaged, both physically, emotionally and financially,
24 and plaintiff prays judgment against defendant as hereinafter set forth.

1 WHEREFORE, plaintiff prays for judgment against Defendant ETS and Does
2 1 through 50 as follows:

3
4 AS TO THE FIRST CAUSE OF ACTION:

- 5 1. For special and general damages according to proof at time of trial.
6 2. For incidental damages in an amount to be determined at trial;
7 3. For reasonable attorney fees;
8 4. For costs of suit incurred; and
9 5. For such other and further relief as the court may deem just and proper.

10

11 AS TO THE SECOND CAUSE OF ACTION:

- 12 1. For special and general damages according to proof at time of trial.
13 2. For incidental damages in an amount to be determined at trial;
14 3. For reasonable attorney fees;
15 4. For costs of suit incurred; and
16 5. For such other and further relief as the court may deem just and proper.

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18 AS TO THE THIRD CAUSE OF ACTION:

- 19 1. For monetary damages, both compensatory and punitive, in an amount to be determined
20 at trial;
21 2. For reasonable attorney fees;
22 3. For costs of suit incurred; and
23 4. For such other and further relief as the court may deem just and proper.

24

25 AS TO THE FOURTH CAUSE OF ACTION:

26

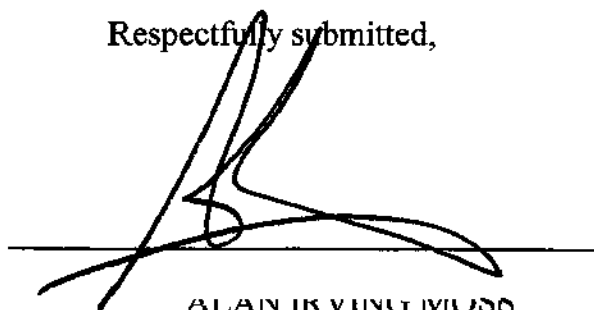
1. For special and general damages according to proof at time of trial.
2. For incidental damages in an amount to be determined at trial;
3. For punitive damages according to proof at trial.
4. For reasonable attorney fees;
5. For costs of suit incurred; and
6. For such other and further relief as the court may deem just and proper.

AS TO THE FIFTH CAUSE OF ACTION:

1. For special and general damages according to proof at time of trial.
2. For incidental damages in an amount to be determined at trial;
3. For reasonable attorney fees;
4. For costs of suit incurred; and
5. For such other and further relief as the court may deem just and proper.

Dated: May 3, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan Irving Moss", is written over a horizontal line.

ALAN IRVING MOSS

Attorney In Pro Per

-UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Alan Moss P.O. Box 721 Moss Beach CA 94038		TELEPHONE NO (415)4948314	FOR COURT USE ONLY
ATTORNEY FOR (name) In Pro Per			ENDORSED FILED SAN MATEO COUNTY AUG 22 2011 Clerk of the Superior Court By <u>A. Degliantoni</u> Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS 400 COUNTY CTR MAILING ADDRESS CITY AND ZIP CODE REDWOOD CITY CA 94063 BRANCH NAME			
PLAINTIFF: ALAN IRVING MOSS DEFENDANT: EXECUTIVE TRUSTEE SERVICES, LLC			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			CASE NUMBER: CIV505386

To (name of one defendant only): EXECUTIVE TRUSTEE SERVICES, LLC

Plaintiff (name of one plaintiff only): ALAN IRVING MOSS

seeks damages in the above-entitled action, as follows:

	AMOUNT
1. General damages	
a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience	\$365,000.00
b. <input type="checkbox"/> Emotional distress	\$365,000.00
c. <input type="checkbox"/> Loss of consortium	\$
d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only)	\$
e. <input type="checkbox"/> Other (specify)	\$
f. <input type="checkbox"/> Other (specify)	\$
g. <input type="checkbox"/> Continued on Attachment 1.g.	
2. Special damages	
a. <input type="checkbox"/> Medical expenses (to date)	\$
b. <input type="checkbox"/> Future medical expenses (present value)	\$
c. <input type="checkbox"/> Loss of earnings (to date)	\$
d. <input type="checkbox"/> Loss of future earning capacity (present value)	\$
e. <input type="checkbox"/> Property damage	\$
f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)	\$
g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only)	\$
h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only)	\$
i. <input checked="" type="checkbox"/> Other (specify) Attorney Fees	\$16,960.98
j. <input checked="" type="checkbox"/> Other (specify) Costs, Copying, Postage, Filing Fees, etc.	\$1,500.00
k. <input type="checkbox"/> Continued on Attachment 2.k.	
3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) \$	748,460.98
when pursuing a judgment in the suit filed against you.	

Date: August 8, 2011

Alan Irving Moss

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Page 1 of 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ALAN MOSS PO BOX 721 MOSS BEACH CA 94038 TELEPHONE NO. (415) 494-8314 FAX NO.: ATTORNEY FOR (Name): IN PRO PER		<h1 style="font-size: 2em; margin: 0;">CLAIM NO. 4445</h1>
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: SUPERIOR COURT SAN MATEO COUNTY		
PLAINTIFF: ALAN IRVING MOSS		
DEFENDANT: EXECUTIVE TASTE SERVICES LLC ET AL.		
MEMORANDUM OF COSTS (SUMMARY)		CASE NUMBER: CIV 505386

The following costs are requested:

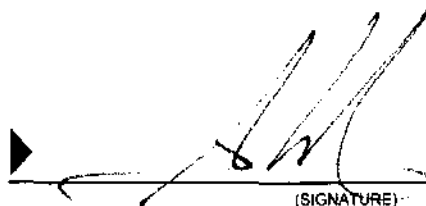
	TOTALS
1. Filing and motion fees COMPLAINT: \$395.00	1. \$ \$395.00
2. Jury fees	2. \$
3. Jury food and lodging	3. \$
4. Deposition costs	4. \$
5. Service of process 5/10/11: \$25.00 8/22/11: \$25.00	5. \$ 50.00
6. Attachment expenses	6. \$
7. Surety bond premiums	7. \$
8. Witness fees	8. \$
9. Court-ordered transcripts	9. \$
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$
11. Models, blowups, and photocopies of exhibits	11. \$
12. Court reporter fees as established by statute	12. \$
13. Other	13. \$ 445.00
TOTAL COSTS	\$ 445.00

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: **2/28/12.**

ALAN MOSS

(TYPE OR PRINT NAME)



(SIGNATURE)

(Proof of service on reverse)

CLAIM No. 4445

1 Alan Moss
2 P.O. Box 721
3 Moss Beach CA 94038
4 Telephone: (415)296-7500
5 Facsimile: (650)728-0738

6 Attorney *In Pro Per*

7
8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10 ALAN IRVING MOSS,

11 Plaintiff,

12 vs.

13
14 EXECUTIVE TRUSTEE SERVICES, LLC
15 F/K/A EXECUTIVE TRUSTEE SERVICES,
16 INC., AND DOES 1-50, INCLUSIVE

17 Defendants.)

Action No. CIV 505386

DECLARATION OF ALAN
MOSS IN SUPPORT OF
REQUEST TO ENTER
DEFAULT JUDGMENT BY
COURT

18
19 I, ALAN MOSS, declare as follows:

20 1. I am the plaintiff in this action, and as such, am familiar with the facts in-
21 volved in this matter, and if called to testify, could and would testify under oath as follows:

22 2. The Complaint in this matter was filed on May 5, 2011. The Complaint is
23 founded on theories of negligence against Executive Trustee Services, LLC f/k/a Executive
24 Trustee Services, Inc.(hereinafter "ETS"), who, acting as trustee, issued all notices regarding
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1 a foreclosure action on plaintiff's property, conducted the trustee's sale, and thereafter issued
2 a trustee's deed. The allegations of negligence are based on (1) the breach of the duty that
3 ETS as trustee owed to plaintiff, and (2) the fact that ETS became trustee by substitution by
4 an entity who would not become the beneficiary of the note for some twenty-three months af-
5 ter the attempted substitution. Under long established California law, a trustee in a foreclosure
6 action owes an equal duty to both beneficiary *and trustor* to act with due care and in good
7 faith, and to insure that the entire process was legally and correctly done. *See Munger vs.*
8 *Moore*(1970) 11 Cal.App.3rd 1; *Kerivan vs. Title Insurance and Trust Company*(1983) 147
9 Cal.App.3rd 225; *Residential Capital, LLC vs. Cal-Western Reconveyance Corp.*(2003) 108
10 Cal.App.4th 807; *Pro Value Properties, Inc. Vs. Quality Loan Service Corp.*(2009) 170
11 CalApp.4th 579.

12 3. The Complaint and the Summons issued thereunder by the clerk of this court
13 were served on defendant by a California registered process server, California Civil Process,
14 Inc. of West Sacramento(hereinafter "CCP"), by serving CSC—Lawyers Incorporating Service
15 (hereinafter "CSC"). CSC is listed on the website of the California Secretary of State as the
16 agent for service of process of defendant ETS.

17 4. CCP informed me that the Complaint and Summons were accepted by CSC,
18 and that if CSC was not the proper agent for service of process on defendant ETS, CCP would
19 have been so informed and CSC would have rejected the papers forthwith. At no time from
20 the time of service to the present has CCP or the undersigned ever been informed that CSC
21 was not the proper agent for service of process on defendant ETS, nor have the papers ever
22 been rejected or returned.

23 5. A Proof of Service of the Summons and Complaint in this matter was filed
24 with the Clerk of this Court on June 2, 2011.

25 6. On June 17, 2011, the undersigned filed a Request To Enter Default with the
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1 Clerk of this Court.

2 7. On June 17, 2011, the Clerk of this Court entered the default of defendant
3 ETS.

4 8. On August 22, 2011, the undersigned filed a Statement of Damages as to
5 defendant ETS with the Clerk of this Court.

6 9. On August 22, 2011, plaintiff filed Proof of Service of Statement of Da-
7 mages on defendant ETS, with a service date of August 9, 2011. Said service was completed
8 by CCP. At no time from the time of service to the present has CCP or the undersigned ever
9 been informed that the CSC was not the proper agent for service of process on defendant ETS,
10 nor have the papers ever been rejected or returned.

11 10. The facts underlying the Complaint in this matter are as follows:

12 A. Plaintiff has owned and resided in the property located at 86 San
13 Lucas, Moss Beach, California(the "property"), within the County of
14 San Mateo, continuously from 1984 to the present.

15 B. On or about June 22, 2005, plaintiff took out a loan against the sub-
16 ject property, as evidenced by a Note. Plaintiff was the borrower, and
17 CJ Mortgage, Inc. was the lender. The Note was secured by a Deed of
18 Trust, in which the purported parties were: CJ Mort-gage, Inc. as the be-
19 neficiary, Alliance One was the trustee, and plaintiff was the trustor.

20 C. According to public records on file with the Records Office of San
21 Mateo County, on or about June 27, 2005, said property was allegedly
22 assigned to Option One Mortgage Corporation by CJ Mort-gage Inc.

23 D. On or about October 26, 2005, Option One Mortgage Corporation
24 prepared a document entitled "Substitution of Trustee," in which it sub-
25 stituted Premier Trust Deed Services Inc. as trustee in place and stead
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1 of Alliance Title.

2 E. On or about September 21, 2006, an entity set forth as "TCIF REO2,
3 LLC" prepared a document entitled "Substitution of Trustee," in which
4 it claims to be the "present beneficiary" and claims to substitute "Execu-
5 tive Trust Deed Services, LLC FKA Executive Trust Deed Services,
6 Inc." as trustee in place and stead of, on information and belief (such in-
7 formation is not set forth in the actual do-cument), Premier Trust Deed
8 Services Inc. Said document was recorded on November 10, 2006. This
9 document was signed in Pennsylvania by a Margie Kwaitanowski, as
10 vice-president of "TCIP REO2, LLC." On or about September 21,
11 2006, Ms. Kwaitanowski was actually employed by GMAC in Pennsyl-
12 vania, a business entity of unknown legal form. In addition, the notary
13 on the document was Brenda Staehle, who was also an employee of
14 GMAC. On or about September 21, 2006, "TCIF REO2, LLC" was not
15 the present beneficiary under the deed of trust referred to hereinabove,
16 nor had it been assigned the deed of trust as of that date. Thus, TCIF
17 REO2, LLC had no authority, power or legal right to substitute a new
18 trustee under the deed of trust.

19 r. Twenty-three months later, according to public records on file with
20 the Records Office of San Mateo County, on or about September 15,
21 2007, said property was allegedly assigned to "TCIF, LLC" (not TCIF
22 REO2, LLC) by Option One Mortgage Inc. The signature of the officer
23 of the assignor was notarized more than four months prior to the signa-
24 ture of the representative of the assignor, on May 7, 2007; the date of
25 May 7, 2007 was interlineated by handwriting after a typed date of May
26

1 8, 2008 was crossed out. The document was allegedly notarized on May
2 7, 2007; the "7" of the "2007" date was written by hand over the "8" of
3 the typed "2008." Based on conversations with this notary, Plaintiff
4 believes that this document was actually signed and notarized on My 8,
5 2008. Said alleged assignment was recorded on June 16, 2008.

6 G. According to public records on file with the Recorders Office of San
7 Mateo County, on or about September 17, 2007, a Notice of Default was
8 recorded against said property. Said document was is-sued by "TCIF
9 REO2, LLC c/o Executive Trustee Services LLC." The document was
10 signed by "Executive Trustee Services, LLC as agent for beneficiary."

11 H. According to public records on file with the Recorders Office of San
12 Mateo County, on or about April 29, 2008, said property was allegedly
13 assigned to The Bank of New York Trust Company by "TCIF, LLC."
14 Said alleged assignment was recorded on June 16, 2008.

15 I. According to public records on file with the Recorders Office of San
16 Mateo County, on or about May 19, 2008, a Notice of Trustees Sale was
17 recorded on said property by ETS Services, LLC , which was, on infor-
18 mation and belief, a sub-entity of Executive Trustee Services.

19 J. On or about May 7, 2009, unbeknownst to plaintiff, a trustee sale
20 took place, conducted by defendant ETS, pursuant to the Notice of
21 Default and Notice of Trustees Sale, regarding the foreclosure on the
22 property, in which defendant ETS as trustee, sold the property. The
23 Notice of Trustee Sale had expired under California law approximately
24 a year earlier.

25 K. On or about May 12, 2009, defendant ETS prepared a document en-
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1 titled Trustee's Deed Upon Sale which purported to grant to The Bank
2 of New York Trust Company, title to said property. The document
3 states that "grantee was the foreclosing beneficiary." On information
4 and belief, this was a full credit purchase sale, and no cash changed
5 hands, in derogation of the specific language of the Notice of Trustees
6 Sale. The Bank of New York Trust Company was not a BFP.

7 L. Thereafter, the Bank of New York has attempted to oust plaintiff
8 from his residence, by the filing of two unlawful detainer actions in this
9 court. The first action(Action No. CLJ199552) was dismissed and the
10 second action(Action No. CLJ199935) was stayed by order of this court,
11 and ultimately dismissed by The Bank of New York.

12 M. The undersigned initiated an action against The Bank of New York
13 for *inter alia* wrongful foreclosure, which action defendant removed to
14 Federal District Court, where it is presently pending.

15 11. Based on the undersigned's investigation into the facts of this matter, and
16 legal research conducted, it was learned that the appointed trustee of a beneficiary has a legal
17 duty to the trustor equal to the duty owed the beneficiary. Based on this, this Complaint was
18 filed against defendant herein for negligence, negligence *per se*, fraud, intentional infliction
19 of emotional distress, and negligent infliction of emotional distress. The essential fact is that
20 ETS took its multiple actions to foreclose on plaintiff's home without ever checking to see
21 if they had the legal power to do so. A simple check of the county's recorded documents
22 would have revealed that the entity that supposedly ap-pointed it to act as trustee had no po-
23 wer to do so for at least twenty-three months. ETS clearly, and beyond dispute based on the
24 recorded documents on file with the County of San Mateo, breached the duty it owed to plain-
25 tiff herein, and as a result, caused extreme damage to plaintiff, which continues to this day.

1 12. The damages which have flowed from defendant's negligence, and were
2 proximately caused by defendant's negligence, are as follows:

3 A. Defendant had a duty to comply with California law, deliberately
4 acted in derogation of several requirements of California law, deliberately acted in derogation
5 of validly issued Orders from this Court, deliberately and intentionally, and this caused
6 plaintiff such emotional distress of such debilitating quality that no reasonable person in a
7 civilized society should be expected to endure it.

8 B. The allegations of outrageous conduct form the basis of the tort of
9 abuse of process: the use of the court to attempt to sanction illegal activity: "...misuse of the
10 power of the court; it is an act done in the name of the court and under its authority for the pur-
11 pose of perpetrating an injustice." That is precisely what happened here: the process server
12 lied that he had personally served the undersigned, and as a result, the Court quashed the al-
13 leged service—not once, but twice.

14 C. Defendant or its attorneys had a duty to ascertain the chain-of-title
15 or to insure that the trustee was acting within its authority. Yet even when this was pointed
16 out to them, they continued to harass plaintiff instead of taking any kind of corrective action.
17 Of note is the fact that even when their unlawful detainer action was stayed, they deliberately
18 showed up for trial three days later with witnesses to proceed. Had not the undersigned show-
19 ed up in court in an abundance of caution, the trial could have proceeded and a default judg-
20 ment obtained. If this is not deliberate interference with a court, it is difficult to perceive what
21 may be.

22 D. Nor can it be argued, though attempt be made, that specific vio-
23 lations of California law were not set forth in the Complaint. The Sixth Cause of Action speci-
24 fically incorporates the previous allegations in their entirety. Those allegations specifically
25 set forth the myriad violations of California law which were committed by this defendant.

1 E. This defendant fraudulently concocted and altered assignments in
2 order to attempt to establish a chain-of-title and create the apparent right of this defendant to
3 proceed with the foreclosure activities. These attempts went so far as to substitute a new
4 trustee months before the defendant had any ownership interest in the property and therefore
5 was without authority to substitute any new trustee. This was done by an employee of defen-
6 dant who had already been held in contempt by a Florida court and sanctioned for the very
7 same activities.

8 F. Defendant owed plaintiff a duty to know the law, to comply with the
9 law, and to not misuse judicial process in derogation of the law. It cannot be stated too force-
10 fully: the defendant engaged in conduct so obviously intended to harm plaintiff that it is evi-
11 dent on the face of the documents which the defendant has previously asked this court to judi-
12 cially notice. They doctored assignments and changed dates on the assignments such that the
13 defendant took title from an entity that didn't even have title at the time they assigned it to
14 defendant. And this occurred notwithstanding attempts on their part to legitimize this whole
15 matter by changing dates on assignment documents and notarizing these documents, in some
16 case four months early and in other cases more than a year later.

17 G. Because of the aforementioned, the undersigned came very close to
18 being evicted from his home. The foreclosing bank filed two separate cases in attempting to
19 evict plaintiff from his home. These actions, with their short time fuse, caused extreme emo-
20 tional distress on a day-to-day basis. Due to the short time limits, and the assumptions inher-
21 ent in the entire process, it became virtually impossible to predict what would happen from
22 day-to-day and week-to-week. Because one of the assumptions inherent in an unlawful de-
23 tainer action is the presumption of regularity, the courts were unwilling to provide plaintiff
24 with a fair and open-minded forum for resolving this matter. As a result of this, plaintiff was
25 forced to hire attorneys to defend him from eviction.

1 H. In order to maintain these lawsuits, there were process servers who
2 came to plaintiff's home at every hour of the day and night, screaming plaintiff's name in the
3 middle of the night, waking plaintiff and the neighborhood, and otherwise striking terror in
4 the heart of plaintiff. Further, the process server lied under oath that he had served plaintiff
5 with process. This was done on multiple occasions.

6 I. Plaintiff lives on a very quiet street with very limited traffic. Essen-
7 tially plaintiff lived for months listening to every car that passed by, waiting to see if the
8 vehicle would stop or keep going.

9 J. The process server would pound loudly on the door and scream plain-
10 tiff's name loudly at 2 o'clock in the morning, waking plaintiff and the neighborhodd. The
11 process server lied about personally serving plaintiff, which was never done, under oath to this
12 court. This is but one example of trying to scare plaintiff out of his home.

13 K. Neither plaintiff's attorneys nor plaintiff was ever able to speak to
14 the attorney of record for the bank. He never would take a call and would never return a call.
15 He was bent on achieving eviction, notwithstanding no legal basis for doing so. Even when
16 this court stayed the scheduled trial three days before it was scheduled, he had an attorney
17 show up at the courthouse with witnesses. If the plaintiff had not have showed up to inform
18 the presiding judge, the trial would have proceeded, notwithstanding that it had been stayed
19 by order of the court. The fear that was experienced during that weekend cannot be under-
20 stated. Further, over a period of a year, and throughout all of the court appearances in this
21 matter, numbering some twenty hearing, not once did the defendant's attorney show up in
22 court, He always hired other attorneys to do his work, who knew nothing of what had trans-
23 pired or what the facts were. This was like continuous torture that went on for over a year.

24 K. Throughout this entire period, the plaintiff was humiliated, unable
25 to function, unable to interact with his community, unable to sleep and unable to relate to
26

1 other individuals.

2 L. As it turns out, the bank's attorney has been suspended due to unethi-
3 cal behavior in foreclosure cases. What he was accused of doing is exactly what happened
4 to plaintiff. If plaintiff had not persevered and attempted to get the truth before the court, the
5 plaintiff would be out on the street.

6 M. Based on the above, the undersigned served and filed a Statement
7 of Damages pursuant to CCP 425.11, which set forth the following in money damages:

- 8 1. Pain and Suffering: \$365,000.00
- 9 2. Emotional Distress: \$365,000.00
- 10 3. Attorney Fees: \$16,960.98
- 11 4. Costs: \$1,500.00
- 12 5. Punitive Damages: \$748,460.98

13 N. These damage figures are based on damages of \$1,500.00 per day for
14 half of a year and \$500.00 per day for another half of a year for Pain & Suffering, and the
15 same allocation for emotional distress. The attorney fees were incurred in trying to prevent
16 eviction in the unlawful detainer action, which was in turn caused by defendant unlawfully
17 selling plaintiff's property, and thereafter issuing a Trustee's Deed to the Bank of New York.
18 The costs are the actual and estimated miscellaneous costs of litigation, including the fees for
19 the process server, mailing, copying, and the like.

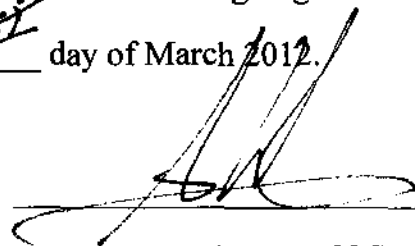
20 13. Since the Complaint contains causes of action for *inter alia* intentional in-
21 fiction of emotional distress and fraud, punitive damages are appropriate in this case. The ut-
22 ter recklessness and carelessness, and the complete derogation of plaintiff's rights, the inten-
23 tional violation of mandatory California law, particularly where such violations go directly
24 toward plaintiff maintaining a dwelling, all indicate the appropriateness of punitive damages
25 in this case. That the allegations of this complaint are not isolated but are widespread is indi-
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1 cated by the recent settlement between forty-nine of the Attorney-Generals of the country and
2 five of the largest banks/loan servicers in the country. The "robo-signing" that was rampant
3 has clearly been proven and the parties to this settlement have readily acknowledged their
4 guilt in this regard.

5 14. It is therefore appropriate to inform the court that one of the parties to the
6 global settlement is Ally Bank. Ally Bank is, on information and belief, the new name taken
7 by GMAC Mortgage. GMAC Mortgage now owns ETS. See Exhibit One attached hereto
8 and made a part hereof. GMAC's involvement in this instant matter is clear from a court fil-
9 ing in the case presently pending in Federal District Court in San Francisco, where an employ-
10 ee who identified himself as part of GMAC requested the Court to allow the substitution of
11 a new attorney on its behalf. GMAC is not named as a party to that lawsuit, and its entry is
12 obviously based on its role as a servicer of the loan on behalf of the Bank of New York.

13 15. Further, this illegal activity on the part of ETS caused extreme harm to
14 plaintiff's credit and other personal data.

15
16 I declare under penalty of perjury that the foregoing is true and correct.
17 Executed at Moss Beach California on the 15th day of March 2012.

18
19
20 
21 ALAN MOSS
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